

Court OF APPEALS No. 41638-7-II

COURT OF APPEALS OF THE STATE OF  
WASHINGTON, DIVISION TWO

STATE OF WASHINGTON

Plaintiff/Respondent,

v.  
Joseph Cortez Jones

Defendant/Appellant.

Pro Se, Statement of Additional Grounds

OF Appellant Joseph Cortez Jones

Appeal from the Superior Court of Pierce County,  
Cause No. 10-1-01468-7

Kitty-Ann van Doorninck, Presiding  
Judge

Joseph C. Jones, Doc# 93474  
Washington State Penitentiary  
1313 North 13<sup>th</sup> Avenue  
Walla Walla, Washington 99362

## Assignments of Error

1.) Was it a violation of Mr. Jones Speedy trial rights, and Due Process, to continue court proceedings after many objections on record by the defendant, and to continue to trial.

Was it ineffective assistance of counsel, for Mr. Olson defense counsel, not to file a motion to dismiss on Speedy trial rights violation, and continuous objections on record? (pg 1, #1)

2.) Did the court use prior conviction against Defendant that was past the statutory limit, and cause irreversible prejudice at trial. And did the court in doing so use prior conviction to ~~not~~ miscalculate offender score during sentencing?

3.) Was it improper for the state to use 911 tape without producing witnesses or evidence as to the authenticity of the 911 tape or to the identity of the speaker, as set forth in State v. Jackson (colloquy page 11 lines 1-24.)? State v Dearl and State v Danielson (pg 9 colloquy)

4.) Did the testimony of Dr. Duralde by the prosecution cause ~~past~~ prejudice. Did the fact Dr. Duralde's opinion although never examining Mr. Barrows or holding any certification in strangulation expertise deprive Mr. Jones of a fair trial?

5. Did Mr. Jones receive ineffective assistance of counsel when counsel failed to call her investigator in to testify about previously interviewing Ms. Young and given testimony. And to fail to call other potential witnesses which fall below an objective standard of reasonableness.

6. Was it prosecutorial misconduct for the prosecution to fail to enter into evidence, testimony from investigator, and instead ignore evidence to obtain a conviction and not seek justice fairly in doing so.

1.) On April 5, 2010, I the defendant was charged with Burglary in the first degree and Assault in the second degree, as a result of an incident that occurred on April 1, 2010, in Pierce County.

I believe my Speedy trial rights were violated. In several pre-trial court dates I asked Mrs. Olson defense counsel to file a motion to dismiss charges, due to Speedy rights violation. Mrs. Olson did not file motion although I requested so. But on record of the court Mrs. Olson defense counsel did note My objection to any continuances. I was charged on April 5, 2010 and convicted at trial on Oct 13, 2010. My case ran approximately 150 days long, and I believe Both my Due Process was violated, and also The First prong of ineffective assistance of counsel is proven. The defense counsel not filing motion to dismiss for violation of speedy trial rights fell below an objective standard of reasonableness.

2.) In page 6 of the Colloquy lines 2-7, the court states that Mr. Jones, defendant's theft in the second degree from 1999 is past the ten years and is not admissible. But admitted the burglary in the second degree in terms of GOF issues.

I have enclosed a copy of my Prior record and The Burglary in the second degree was also past the ten years and was still used by the court against me. The crime or burglary in the second degree was committed Jan 25, 2000 and I, Mr. Jones signed a plea agreement shortly after in February 2000. State v. Errin 2009 states that only a conviction pursuant to a felony can interrupt that time. This Conviction for Burglary in the first and Assault in the second degree was filed on April 5, 2010 and was past the ten year mark. Furthermore the use of this charge of burglary in the second degree from 2000 January caused irreversible ~~past~~ prejudice at my trial and In calculating my offender score. I was giving and offender score of 6 and believe that to be in error also (see attached stipulation to prior record 3).

3. (A) In reference to State v Olson (pg 7 colloquy) I do not believe the state can imply the factors of the 911 call without the presence of the witness. State v Jackson, In order to lay proper foundation the state must produce a witness who had personal knowledge of the events recorded on the 911 call, and that would be Ms. Young who was not present. That the witness listened to the tape and compared it to the events, and the tape accurately portrays those events. To authenticate the 911 call the must show the recording machine was capable of taking testimony, that the operator was competent to operate it, that the resulting recording is authentic and correct. That the tape has been preserved without changes, deletions or additions. Last and fifth element, a witness to the identity of each relevant speaker, whom the state produced no witness to either element for authentication. Without those witnesses as to the authenticity or to the speaker on the tape, the tape should have been excluded from the trial.

(B) State v. Deaver and State v. Danielson (pg 9 colloquy) Both discuss instances which the voice on the 911 tape cannot be authenticated, and relies on facts in the call itself. Excited utterance can work either way. At the time of a 911 call things are often hysterical and unclear. Things said in a hysterical situation may not be the same once people have calmed down and they can recollect the situation without stressors involved. During the incident Mr. Barrows and Ms. Young had both been smoking marijuana (see page 52 of Donald Barrows - Direct by M. McGaha lines 9-17). And so would have had very cloudy judgement and/or memory. So the state cannot find fact in the tape without presence of the caller. The tape cannot authenticate it itself.

4.) The prosecution had Dr. Yolanda Durable testify as a witness. Dr. Durable testifies that she has taken a three day course on strangulation (page 84 lines 1-4) and that she is board certified in family practice. Dr. Durable holds no special certification on strangulation expertise and I believe that her testimony was ~~not~~ not warranted and caused extreme prejudice. Dr. Durable does not hold any certificates in strangulation, she does not work in the strangulation field, and Dr. Durable did not examine Mr. Barrows at no point, she only reviewed a police report and photo's (page 89 lines 22-25). Dr. Durables opinions she testified to should not have been admitted.

5. I believe that I received ineffective assistance of counsel when Ms. Olson defense counsel failed to call witnesses, that would have ultimately changed the outcome of trial. ~~Ordinarily~~  
Ordinarily, the decision whether to call a witness is a matter of trial tactics and will not support a claim of ineffective assistance. (State v. Kolesnik, 146 Wn. App. 790, 812, 192 P.3d 937 (2008), review denied, 165 Wn. 2d 1050, 208 P.3d 555 (2009)). Ms. Olson defense counsel failed to call on Marcia Lane, which is Monique Young's sister, Joanna Juarez an acquaintance of Mr. Barrows, The manager of Lanai Village Apartments were Ms. Young lived to obtain a declaration as to the fact that I Mr. Jones personally paid the rent each month for Monique Young's apartment, and most importantly to call the Investigator who interviewed Ms. Young and had taken that testimony before trial. The investigator could have and should have been called to testify to the fact Ms. Young told him I possessed a key to her apartment, that I came and went with no restrictions for 3 years prior to the day in question, and that Mr. Barrows had in fact struck me in the face first upon entering the apartment. Ms. Young had a interview with both the defense and the prosecution. I believe the failure of defense counsel to call on those witnesses or even attempt to interview some at my request was deficient and fell below an objective standard of reasonableness.

6. In the same sense I believe that prosecutorial misconduct is also present when the prosecutor failed to enter into evidence the investigator who received testimony from Ms. Young and that in a interview she told that investigator that I had a key and paid for her apartment and had no restrictions. In testimony I said I possessed a key to the apartment of Ms. Young and it was unrebuted, but in closing argument the prosecutor told the jury I had no such key, which was not in evidence that I did not. The prosecutor already had knowledge of me possessing the key and I believe she abused her discretion by ignoring evidence she had obtained prior to trial.

**SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY**

**STATE OF WASHINGTON,**

**Plaintiff,**

CAUSE NO. 10-1-01462-6

## JOSEPH CORTEZ JONES,

**Defendant**

**STIPULATION ON PRIOR RECORD  
AND OFFENDER SCORE**

Upon the entry of a plea of guilty in the above cause number, charge BURGLARY IN THE FIRST DEGREE; ASSAULT IN THE SECOND DEGREE , the defendant JOSEPH CORTEZ JONES, hereby stipulates that the following prior convictions are His complete criminal history, are correct and that He is the person named in the convictions:

## WASHINGTON STATE CONVICTIONS

Crime	Date of Sentence	Jurisdiction	Date of Crime	Adult/ Juvenile	Crime Type	Class	Score	Felony or Misdemeanor
BURGLARY 2	10/17/96	Pierce County Superior Court, WA	03/01/96	JUV	NV			Felony
OTHER CURRENT OFFENSE 10-1-01462-6 BURGLARY 1	11/05/10	Pierce County Superior Court, WA	04/01/10	A	V			Felony
OTHER CURRENT OFFENSE 10-1-01462-6 ASSAULT 2	11/05/10	Pierce County Superior Court, WA	04/01/10	A	V			Felony

THEFT	03/02/99	Pierce County Superior Court, WA	06/10/98	A	NV			Felony
BURGLARY	03/20/00	Pierce County Superior Court, WA	01/25/00	A	NV			Felony
SHOPLIFT		Tacoma Municipal Court, WA	04/09/97	A	NV			Misdemeanor
ASSAULT DV		Tacoma Municipal court, WA	01/15/98	A	NV			Misdemeanor
DWLS		Pierce County District Court 1, Tacoma, WA	08/01/98	A	NV			Misdemeanor
DWLS		Tacoma Municipal Court, WA	1/17/98	A	NV			Misdemeanor
DWLS		Tacoma Municipal Court, WA	05/02/00	A	NV			Misdemeanor
DWLS		Tacoma Municipal Court, WA	06/13/02	A	NV			Misdemeanor
DWLS		Fircrest Municipal Court, WA	04/04/03	A	NV			Misdemeanor
SHOPLIFT		Tacoma Municipal Court, WA	10/19/04	A	NV			Misdemeanor
TELEPHONE HARASSMENT DV		Tacoma Municipal Court, WA	07/14/05	A	NV			Misdemeanor

Concurrent conviction scoring:

CONVICTIONS FROM OTHER JURISDICTIONS

The defendant also stipulates that the following convictions are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525 (Classifications of felony/misdemeanor, Class, and Type made under Washington Law):

Crime	Date of Sentence	Jurisdiction	Date of Crime	Adult/ Juvenile	Crime Type	Class	Score	Felony or Misdemeanor
NONE KNOWN NOR CLAIMED								

Concurrent conviction scoring: N/A.

The defendant stipulates that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	6	VII	57 MOS. TO 75 MOS.		57 MOS. TO 75 MOS.	LIFE/\$50,000
II	4	III	15 MOS. TO 20 MOS.		15 MOS. TO 20 MOS.	10 YRS./\$20,000

(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom. See RCW 46.61.520,  
(JP) Juvenile present.

The defendant further stipulates:

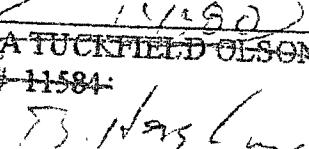
- 1) Pursuant to Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), defendant may have a right to have factors that affect the determination of criminal history and offender score be determined by a jury beyond a reasonable doubt. Defendant waives any such right to a jury determination of these factors and asks this court to sentence according to the stipulated offender score set forth above.
- 2) That if any additional criminal history is discovered, the State of Washington may resentence the defendant using the corrected offender score without affecting the validity of the plea of guilty;
- 3) That if the defendant pled guilty to an information which was amended as a result of plea negotiation, and if the plea of guilty is set aside due to the motion of the defendant, the State of Washington is permitted to refile and prosecute any charge(s) dismissed, reduced, or withheld from filing by that negotiation, and speedy trial rules shall not be a bar to such later prosecution;
- 4) That none of the above criminal history convictions have "washed out" under RCW 9.94A.360(3)/9.94A.525 unless specifically so indicated.

If sentenced within the standard range, the defendant further waives any right to appeal or seek redress via any collateral attack based upon the above stated criminal history and/or offender score calculation.

Stipulated to this on the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

  
ANGELICA MCGAHA  
Deputy Prosecuting Attorney  
WSB # 36673

  
JOSEPH CORTEZ JONES

  
PAULA TUCKFIELD OLSON  
WSB # 11584

shs